

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MICHAEL E. KEYSER

VS.

THE KROGER COMPANY

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4:92-CV-342-Y

DOCKET CLERK

Deputy

ORDER REMANDING TO STATE COURT

On June 18, 1992, this Court denied Plaintiff's motion to remand. After reconsidering said motion, this Court is of the opinion that Plaintiff's motion to remand is meritorious and should be GRANTED. It is, therefore, ORDERED that this Court's June 18, 1992 Order is VACATED and the above-styled and numbered cause is REMANDED to the 17th District Court of Tarrant County, Texas.

Plaintiff has alleged that he was wrongfully discharged after filing a claim for a work-related injury pursuant to Tex. Rev. Civ. Stat. Ann. article 8307c.¹ Defendant maintains that article 8307c does not apply to Kroger because it is a non-subscriber to the Texas Worker's Compensation Act. Although Defendant urges this Court to interpret narrowly art. 8307c, this Court believes that article 8307c is a cause of action available to

¹ Section 1 of article 8307c provides in pertinent part that:

No person may discharge or in any other manner discriminate against any employee because the employee has in good faith filed a claim, hired a lawyer to represent him in a claim, instituted, or caused to be instituted, in good faith, any proceeding under the Texas Workmen's Compensation Act.

Tex. Rev. Civ. Stat. Ann. art. 8307c.

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any worker, regardless of whether the employer subscribes to the Texas Worker's Compensation Act.

Federal law governs the construction of removal statutes. See Grubbs v. General Elec. Credit Corp., 405 U.S. 699, 705, 92 S. Ct. 1344, 1349 (1972). A party may not remove any civil action in any state court "arising under the workmen's compensation laws of such State." 28 U.S.C. § 1445(c). In Jones v. Roadway Express, Inc., 931 F.2d 1086, 1091-92 (5th Cir. 1991), the Fifth Circuit held that an action under article 8307c is a civil action "arising under" the workers' compensation laws of Texas. The Jones court clearly recognized that article 8307c is part of the workers' compensation laws governed by 28 U.S.C. § 1445(c), but not part of the Texas Workers' Compensation Act. In arriving at its conclusion, the court noted that the Texas Legislature enacted article 8307(c) "to safeguard its workers' compensation scheme." Jones, 931 F.2d at 1092. The court then held that "[w]ere workers to refrain from filing claims for benefits or otherwise to refuse to participate in compensation proceedings for fear of retaliation, the legislature's elaborate workers' compensation scheme would be adversely affected." Jones, 931 F.2d at 1092 (citing Thomas v. Kroger Co., 583 F. Supp. 1031, 1037 (S.D.W. Va. 1984)).

Accordingly, because Congress intended that all cases arising under a state's workers' compensation scheme remain in state court, this Court shall read section 1445(c) broadly to further that purpose. Accordingly, pursuant to section 1445(c), Plaintiff's civil action under article 8307c arises under the

workers' compensation laws of Texas, and is therefore, more appropriate for state court jurisdiction.

SO ORDERED.

SIGNED this 20th day of July, 1992.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

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